THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITON NO.20282 OF 1997

BETWEEN:

L.Siva Prasadand 14 others

..Petitioenrs

VS.

The A.P. State Road Transport Corporation, Hyderabad rep. By its Managing Director and three others

..Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITON NO.20282 OF 1997

ORAL ORDER

Heard Sri O.Manohar Reddy, the learned counsel for the petitioners. There is no representation on behalf of the

respondents-A.P.S.R.T.C.

The petitioners assail the inaction of the respondents in paying graduate increment in the post of Junior Assistant, as being contrary to Clause.7(A) of the Andhra Pradesh State Road Transport Corporation Employees (Pay and Allowances) Regulations 1964 (for short "the Regulations") and seek a direction to the respondents for payment of graduate increment from the date of their appointments as Junior Assistants. The relief sought is a bit misleading as the factual discussion to follow, would show:-

The 15 petitioners were initially recruited as Conductors in APSRTC in Srikrishnadevaraya Region (Presently Anantapur Region) on several dates during May-1982 to July-1989. At the time of their respective initial appointments as Conductors, the qualification prescribed for the post of Conductor is a pass in S.S.C. examination. All the petitioners were however graduates when they entered service as Conductors. In view of their graduate qualification, the petitioners were granted graduate increments in the post of a Conductor treating the same as Personal Pay.

The petitioners thereafter applied for direct recruitment as Junior Assistants. They were selected and appointed as Junior Assistants on direct recruitment during the years 1989 to 1996 on distinct dates, which are not relevant for the purpose of this writ petition.

The petitioners assert that Clause.7(A)(e) of the Regulations enjoins that where an employee in the service of the Corporation is selected for appointment by direct recruitment to another post in the service of the Corporation whether in the same or any other class or category, subject to the other provisions of these or the other regulations as the case may be,

shall be eligible for fixation of pay in the time scale of the new post at the stage equal to the pay in the former post and if there is no such stage at the next higher stage, of pay in the next post. Clause.2(x) of the Regulations defines “pay” to mean the monthly amount paid for the service rendered by an employee and includes his substantive pay, officiating pay, personal pay, special pay or any other emoluments as pay to which he may be entitled. Clause.2 (xi) defines “personal pay” to mean an additional pay granted to an employee to either protect for the by loss of substantive pay consequent on the revision of pay scales wherein a reduction has been effected or on other personal considerations.

The petitioners assert that as the graduate increment awarded to them as a personal pay tantamounts to an additional pay on other personal considerations within the meaning of the expression “personal pay” as defined in Clause.2(xi) of the Regulations, the petitioners are entitled to the determination of the appropriate slot in the time scale of pay in the post of Junior Assistant duly reckoning the graduate increment they were granted while in service as Conductors. This not having been done, they are before this Court seeking appropriate relief, already adverted to.

In para.6 of the writ petition the petitioners assert that the respondents have denied them the benefit of fixation of pay scale in the category of Junior Assistants duly giving them the benefit of personal pay (graduate increment) on the ground that the Executive Committee of the Board of the respondent-Corporation had taken a decision that persons appointed as Junior Assistants with effect from 01-04-1989 are not eligible for graduate increment. The petitioners assert that the Executive Committee of the Board is incompetent to override the clear

mandate of the statutory Regulations. The petitioners contend that all employees with graduate qualifications, who are appointed as Conductors and granted graduate increment constitute a single indivisible class and cannot be discriminated *inter se* on the basis of a cut off date identified pursuant to a decision of the Executive Committee of the respondent-Corporation Board.

The Law Officer of the respondent –Corporation has filed a counter-affidavit. To the extent relevant and material for the purpose of this writ petition, the counter-affidavit asserts that the petitioners had, subsequent to the their initial appointments as conductors, applied for and been appointed on direct recruitment as Junior Assistants. The minimum qualification for the post of Junior Assistant is graduation and on appointment to the post of Junior Assistant the minimum qualification for the post being graduation the petitioners are not entitled to graduate increment either as personal pay or otherwise. In this view of the matter the graduate increment granted to the petitioners as personal pay during the period they were serving as Conductors has not been and cannot be taken into consideration while fixing their pay in the post of Junior Assistant. According to the respondents, the benefit of additional increment is co-related to the post of Conductor and was withdrawn as petitioners had opted to appointment as Junior Assistant by direct recruitment. On such appointment they would forego the benefits attached to the initial post of Conductor, is the substance of the respondent's case.

The provisions of Clause.2 (x), (xi) and Sec.7(A)(e) are clear, contain no ambiguity nor are susceptible to contrived interpretation. The graduate increment granted to the petitioners while working as Conductors is personal pay as the said

expression is defined in Clause.2(xi). Personal Pay is a pay as defined in Clause.2(x), pay drawn by the petitioners as conductors including the graduate increment which is personal pay to them is a pay in respect of which they are entitled to protection on direct recruitment as Junior Assistant, in view of the provisions of the Clause.7(A)(e) of the Regulations. This protection the petitioners are entitled to under the Regulations cannot be deprived of on the ground that the Executive Committee of the Board of the respondent-Corporation has creatively identified a cut off date for grant of graduate increment, though ambiguously pleaded and vaguely prayed.

The substantive contention of the petitioners is that they should be granted graduate increment while working as Junior Assistants but that the personal pay component (graduate increment) they were paid while working, as Conductors should also be taken into consideration while determining and fixing their pay on direct recruitment as Junior Assistants. This part of the relief, which is the substantive relief claimed by the petitioners cannot be avoided by the respondent-Corporation, a decision of the Executive Committee of the Board of the respondent-Corporation, notwithstanding. Any decision of the Executive Committee of the respondent-Corporation Board must be dissolved in the solvent of the statutory Regulations.

For the aforesaid reasons, the petitioners are entitled to the claim. Accordingly, the respondents are directed to re-fix the petitioners' pay in the category of Junior Assistants, with effect from the respective dates on which they were appointed and joined duty as Junior Assistants, duly taking into consideration the pay drawn by the them as Conductors including the personal pay of graduate increment that was paid to them during their service as Conductors, as mandated by Clause.7(A)

(e) of the Regulations. The above exercise shall be initiated and concluded by the respondents within a period of three(3) months from the date of receipt of a copy of this order.

In the circumstances above the writ petition is allowed but without costs.

GODA RAGHURAM,J

21st MARCH 2007
***TSNR**